



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

February 3, 2015

Mr. Clay M. Howard
Westville Correctional Facility
5501 S. 1100 W.
Westville, IN 46391

Re: Formal Complaint 15-FC-02; Alleged Violation of the Access to Public Records Act by the Westville Correctional Facility

Dear Mr. Howard,

This advisory opinion is in response to your formal complaint alleging the Westville Correctional Facility ("Facility"), violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* Mr. John F. Schrader, Litigation Liaison, responded on behalf of the Facility. His response is attached for your review. I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 5, 2015.

BACKGROUND

Your complaint filed on January 5, 2015, alleges the Westville Correctional Facility violated the Access to Public Records Act by failing to produce information you requested.

On or about November 18, 2014, you requested a mug shot of a named individual from the Tippecanoe County Jail. The jail sent the photo to the Westville Facility mailroom where it was confiscated. The confiscating party cited Ind. Code § 5-14-3-4(b)(23)(B) as justification for denying you access to the record. Under that particular statute, information requested which causes concern or could affect the security of a jail or correctional facility may be redacted.

The Facility responded to your formal complaint by citing the same statute arguing the photo contained booking information, which in turn contained personal information of the individual. The Facility argues an inmate obtaining information about another without their knowledge creates a security concern for the facility.

DISCUSSION

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Westville Correctional Facility is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy Facility’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Your complaint is unique as your request was not by the custodian of the record, but rather the Facility at which you are incarcerated. By receiving the documentation from the Tippecanoe County Jail, however, the Facility has become the custodian of the record. The Facility cites security protocols for withholding the record. The original denial also stated the Facility does not separate sensitive information from disclosable public record and if a record contains any sensitive information then the entire record will be withheld.

These responses pose several issues under the APRA. First, the Facility has not identified how the documentation poses a security threat to the Facility. By stating “an inmate obtaining such personal information about another without their knowledge creates a security concern for the facility” is dubious at best. The Facility has not identified whether the named individual about whom you seek information is a fellow inmate, a victim of a crime, or any other protected individual under Ind. Code § 5-14-3-4(b)(23).

Secondly, if a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request, separate the material which may be disclosed and make it available. See Ind. Code § 5-14-3-6(a). By failing to do so or by identifying why the record is a security concern, they have violated the APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Westville Correctional Facility acted contrary to the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. John F. Schrader